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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,531	06/25/2003	Helmut Jerg	2000P13026WOUS	4119

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EXAMINER

DRODGE, JOSEPH W

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,531

Applicant(s)

JERG, HELMUT

Examiner

Joseph W. Drodge

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 10-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8 and 14-19 is/are rejected.
- 7) ☒ Claim(s) 10-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting Rejection mitigated

1. The double patenting rejection of claims over as being unpatentable over claims 10-25 of copending Application No. 10/603,758 has been mitigated in view of the terminal disclaimer which has been accepted by the Office. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both disclose a filter having a filter body with a plurality of filter openings, each having a passage cross-section, which varies automatically in response to a characteristic inherent to a medium flowing through the openings to filter the medium.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Oath/Declaration Acceptable

The oath or declaration filed 2/13/2006 is acceptable.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

3. ***Claim Rejections 35 USC 112, 1ST Paragraph***

Claims 15-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The instant Specification describes two mutually exclusive embodiments, one where the filter body openings, themselves, have a passage cross-section that varies and one where the filter body openings are covered by a elements whose shape or position varies. The Specification at page 3, 1st and 2nd paragraph and page 5, 2nd paragraph make clear that these are alternative embodiments. Thus the claiming of both openings with passages of varying cross-section and screen or covering elements whose state varies as in claims 15 and 19 (and dependent claims 16-18) ***constitutes New Matter.***

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1723

Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Jacobs, U.S. Patent No. 3,179,116.

Jacobs discloses a filter (#42) comprising: a filter body having a plurality of filter openings (#86) for filtering a medium flowing through the openings; and each of the openings having a passage cross-section which varies automatically in response to a fluid pressure characteristic inherent to the medium flowing through the openings (Col. 3, Lines 65-70). The filter is within a dishwashing machine (#10).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alabaster patent 3,122,148.

Alabaster discloses filter body 9 whose top-most openings are covered or screened by an element 24 which changes state by flexing in response to heating of the fluid medium (column 4, lines 4-9 and 24-30 and figure 4). However, Alabaster does not disclose plural such elements 24, although disclosing the option of having plural screening baffles 12 covering openings of the filter body 9 to minimize overspilling or filter by-passing (column 4, lines 4-12). It would have been obvious to one of ordinary skill in the art to have modified the Alabster device by having plural rather than a single element 24, in order to more completely minimize over-spilling or filter by-passing. Also, duplication of parts has no patentable significance unless a new and unexpected result is produced. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Claims 14,15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alabaster, U.S. Patent No. 3,122,148.

Regarding Claim 14, the filter body 9 of Alabaster is in the form of a filter bag of a mesh material having a plurality of openings/apertures (column 3, lines 33-49). This and other filters of Alabaster gradually accumulate soil, dirt and food particles in use (column 4, lines 13-16 etc.). Claims 14,15 and 19 differ in requiring te filter openings themselves to have a cross-section which vary in response to a characteristic of the medium.

However, newly cited Marshall patent 6,210,573 teaches that mesh bag filters used in an analogous art , clothes washing machines have openings that automatically expand in response to particulate material concentration of the fluid being filtered (Abstract).

Hence, it would have been obvious to one of ordinary skill in the art to have recognized that the filter bag openings of Alabaster automatically have a cross-section that varies in response to fluid particulate matter concentration in view of the teachings of Marshall.

Claim 14 closes a filter comprising: a filter body (#9) having a filter opening (#24) for filtering a medium flowing through the openings; and having a passage cross-section which varies automatically in response to a characteristic inherent to the medium flowing through the openings (Col. 4, Lines 24-30). However, Alabaster does not disclose a plurality of filter openings. Regarding Claims 9 and 15, Alabaster discloses filter opening being screened or covered by an element whose state relative to the opening varies under the influence of the heat of the medium flowing through the openings (Col. 4, Lines 24-30).

For claim 15, filter body 9 has top-most openings are covered or screened by an element 24 which changes state by flexing in response to heating of the fluid medium (column 4, lines 4-9 and 24-30 and figure 4). It would also have been obvious to incorporate plural such elements 24 (see discussion of claim 8). For claim 19, the elements 24 are disclosed as "flexing" , hence (flapping), see column 4, lines 24-27, such flapping occurring when there is an increased flow rate of the medium during the main portion of the washing cycles of the dishwasher, as compared to the start-up of the washing cycles (column 4, lines 13-19).

Allowable Subject Matter

6. Claims 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Regarding Claim 10-12 and 16-18, Alabaster does not teach that the screening or covering elements are punched out of the filter body and are in the shape of tongues positioned in the filter openings. None of the covering elements 12 or 24 of Alabaster are positioned in filter openings, instead are proximate the surfaces of the filter body .

Response to Arguments

7. Applicant's arguments with respect to Claims 8,10-12 and 14-19 have been considered but are moot in view of the new ground(s) of rejection. However, arguments pertaining to Jacobs and Alabaster will be addressed anyway to the extent they remain germane.

8. For Jacobs, it is argued that no heat-sensitive elements, relative to filter body openings are taught. However, it is submitted that claim 14 does not require screening or covering elements, or any structure which is heat sensitive.

9. For Alabaster, the same argument is made. However, it is submitted that the instant claims do not require that ***each and every opening*** of the filter body has a screening or covering element and do not require screening or covering elements ***to be in any particular configuration or upstream or downstream orientation relative to the filter body openings. Hence, Alabaster teaches the subject matter as claimed.***

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Drodge whose telephone number is 571-272-1140. The examiner can normally be reached on 8:30-5:00 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD

September 12, 2006


JOSEPH DRODGE
PRIMARY EXAMINER